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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Westway Manufacturing Co., Inc.

File: B-224236

Date: October 3, 1986

DIGEST

Protester's best and final offer, received 4 days after the date specified for receipt of best and final offers, was properly rejected where none of the exceptions outlined in the solicitation permitting consideration of a late offer applies and where protester's late best and final offer was not a modification of an "otherwise successful" offer.

DECISION

Westway Manufacturing Co., Inc. protests the award of a contract by the Defense Personnel Support Center, Defense Logistics Agency (DLA), Philadelphia, Pennsylvania, under request for proposals (RFP) No. DLA100-86-R-0657. The protester contends that it was entitled to the award as the low offeror and protests rejection of its best and final offer as late.

We dismiss the protest.


The RFP provided that the government reserved the right to award the contract based on the best delivery schedule obtainable. Westway timely submitted a proposal by July 8, 1986, the closing date for receipt of initial proposals. By mailgram dated July 9, 1986, the contracting officer established an accelerated delivery schedule and requested best and final offers by July 14, 1986. By its own admission, Westway's best and final offer was misaddressed and was apparently received by DLA on July 18, 1986, 4 days after the closing date for receipt of best and final offers. While Westway was the low offeror both in its initial proposal and in its best and final offer, Westway states that DLA awarded the contract to another firm based on the accelerated delivery schedule set forth in the request for best and final offers. Westway's best and final offer, which also offered accelerated delivery, was not considered by DLA because it was late.

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A proposal modification received after the time set for receipt of best and final offers generally may be considered only under the circumstances stated in the solicitation. See Potomac Systems Resources, Inc., B-219896, Oct. 8, 1985, 85-2 CPD ¶ 393. Here, paragraph (a) of the solicitation's Late Submissions, Modifications and Withdrawals of Proposals clause (Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.215-10 (1985)) permits consideration of a late proposal only if it is both received before award and it was sent by certified or registered mail at least 5 days prior to the date specified for receipt of offers, or it was sent by mail and the late receipt was due solely to mishandling by the government after timely receipt at the government installation, or it was the only offer received. Westway does not allege that any of these exceptions applies here.

Westway does assert that the solicitation specifically authorizes consideration of a late offer under the circumstances here involved and refers to paragraph (c) of the clause cited above, which permits acceptance of a late modification of an otherwise successful proposal that makes its terms more favorable to the government. However, this clause allows the government to accept more favorable terms only from an offeror that would receive the contract anyway. See Woodward Associates, Inc.; Monterey Technologies, Inc., B-216714 et al., Mar. 5, 1985, 85-1 CPD ¶ 274. In such circumstances, other offerors cannot complain because their relative standing would not be affected. The clause, however, does not permit acceptance of a late modification from a firm not already in line for award. See Windham Power Lifts, Inc., et al., B-214287, Mar. 7, 1984, 84-1 CPD ¶ 278. Here, Westway did not offer accelerated delivery in its initial proposal and thus appears not to have been in line for award merely on the basis of its lower price. Thus, there was no basis for accepting a modification of Westway's proposal received after the time set for receipt of best and final offers. See Poli-Com, Inc., B-198494, Nov. 6, 1980, 80-2 CPD ¶ 341.

The protest is dismissed. 4 C.F.R. § 21.3(f) (1986).


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